

# MTSA/ISPS POLICY ADVISORY COUNCIL

April 26, 2005

## Policy

### Exceptions to Part 105 Applicability for Oil and Natural Gas Facilities 57-05

**FINAL**

#### **Issue (57-05):**

Clarification has been requested with respect to the exceptions provided for by 33 CFR 105.105 (c) (2) and (3).

- 1) Do the exceptions stated in 33 CFR Part 105.105(c) trump applicability factors stated in Part 105.105(a)?
- 2) If an excepted facility interfaces with a vessel subject to 33 CFR Part 104 will the facility lose the exception and become subject to 33 CFR Part 105?
- 3) Is there a requirement that both the facility and the vessel(s) that it interfaces with be under the same ownership?
- 4) Are vessels that are otherwise subject to 33 CFR Part 104, who call solely on these excepted facilities, excepted from the requirements of 33 CFR Part 104 as well?
- 5) May facilities that receive ISPS certified foreign flagged vessels engaged on international voyages claim this regulatory exception?
- 6) May facilities that receive non-MTSA or non-ISPS regulated foreign flagged vessels claim this regulatory exception.

#### **Policy:**

- 1) Facilities who receive foreign vessels subject to SOLAS Chapter XI **may not** be excepted from regulation as allowed in 33CFR105.105 (c).

The exceptions described in 33 CFR 105.105 (c) (2) and (3) may be allowed only when a facility fully meets **all** the criteria enumerated in the regulation; with the operative words for exception being: “**engaged solely in...**”.

Facility owners and/or operators and Coast Guard personnel, must ensure that when applying exception criteria; a facility's operations **cannot include regulated activities outside or in addition to (not "engaged solely in...") those described in the criteria for exception.**

For example: a facility would not be allowed to claim or continue exception from regulation if it engaged in any regulated activity not associated with being **"solely engaged in..."** oil and natural gas operations as described in regulation i.e.: exploration, development and production.

On the other hand, a facility, meeting all provisions of the Section (c)(3) exception, that receives U.S flagged Offshore Supply Vessels which solely support oil and gas operations would not need to meet the requirements of 33 CFR Part 105. Facilities covered under this exception could receive any of the following vessels, among others: U.S. flagged Offshore Supply Vessels certificated under Subchapter L or Subchapter I, and US Flagged Offshore Supply Vessels carrying SOLAS documents.

Once a facility fully meets the criteria for exception from regulation, and maintains such qualification, only then would such exception trump applicability factors, unless the facility receives foreign vessels subject to SOLAS Chapter XI.

Facilities that do not qualify for this exception may request waivers, as described in 33 CFR 105.130. Facilities, such as those not subject to 33 CFR Parts 126 and 154, and those operating in operations outside of oil and natural gas operations, are encouraged to follow the waiver procedures outlined in 33 CFR 105.130.

- 2) No. A facility may interface with a vessel subject to 33 CFR Part 104 and maintain exception from 33 CFR Part 105 as long as the interface is related to activities that are **"solely engaged in..."** oil and natural gas operations described in regulation.
- 3) No. There is no requirement that excepted facilities and the vessels that call on them be under the same ownership.
- 4) No. Vessels otherwise subject to 33 CFR Part 104 who call solely on excepted facilities remain subject to the applicable provisions of 33 CFR Part 104.
- 5) No. Part A.3.1.2 of the International Ship and Port Facility Security Code (ISPS) requires port facilities serving vessels with International Ship Security Certificates engaged on international voyages to comply with the Code. Therefore, facilities receiving ISPS certified foreign flagged vessels engaged on international voyages are not able to claim this regulatory exception, and must comply with 33 CFR Part 105.
- 6) Yes. As long as the facility meets the criteria outlined in 33 CFR 105.105(c), it may claim the exception.

